

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Unlicensed Debt Collection Activities of Morgenthal, Meyers & Sterns, Inc., a/k/a/ MMS Outsourcing and MMS Commercial Debt Recovery, Inc.	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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This matter came on for a prehearing conference before Administrative Law Judge Steve M. Mihalchick at 3:15 p.m. on May 17, 2010. Christopher Kaisershot, Assistant Attorney General, appeared for the Department of Commerce (the Department). Respondent Morgenthal, Meyers & Sterns, Inc. (MMS) did not appear in person or by counsel, nor has MMS contacted the Administrative Law Judge to request a continuance of this matter. Based upon Respondent's failure to appear, the Department has requested a Default Recommendation.

STATEMENT OF ISSUES

1. Did Respondent engage in unlicensed collection agency and/or collector activities in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2), and 332.33, subd. 1, by conducting business within the State as a collection agency and/or engaging within the State in the business of collecting claims for others without having first applied for and obtained a collection agency license?

2. Did Respondent show itself to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 332.37 (8), by refusing or intentionally failing to account to Vogt Heating, Air Conditioning & Plumbing, LLC (Vogt) for all money collected within 30 days from the last day of the month in which the same was collected?

3. Did Respondent show itself to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 332.37 (8), by refusing to return claims, valuable papers, and accounts upon written request of Vogt within 30 days of the request?

4. Did Respondent show itself to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 45.027, subd. 7(a)(4), by diverting Vogt's \$1,000 intended to pay for the costs associated with the commencement of legal proceedings?

5. Did Respondent fail to respond to the Department's information request in violation of Minn. Stat. § 45.027, subd. 1a and 7(a)(3)?

6. Is the Department justified in taking disciplinary action against Respondent?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 9, 2010, the Notice and Order for Prehearing Conference in this matter was served by first class mail upon Respondent at the last known address on file with the Department of Commerce. It notified Respondent of the Prehearing Conference scheduled for May 17, 2010, at 3:15 p.m. at the Office of Administrative Hearings. The Notice and Order for Prehearing Conference was returned to the Department as not deliverable as addressed and contained a forwarding address notice from the USPS. On April 27, 2010, the Notice and Order for Prehearing Conference was served by first class mail upon Respondent at the forwarding address. That Notice and Order for Prehearing Conference was also returned to the Department as not deliverable as addressed.

2. The Notice and Order for Prehearing Conference informed Respondent that if it failed to appear at the Prehearing Conference a default order could be issued, the allegations against Respondent set forth in the Notice and Order for Prehearing Conference could be taken as true, and its proposed action could be upheld. It also informed Respondent that it may be subject to discipline by the Commissioner, including the imposition of civil penalties.

3. Respondent did not file a Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief, or notify the Department or the Administrative Law Judge that it was unable to appear.

4. On May 17, 2010, Respondent failed to appear at the Prehearing Conference, either by telephone or in person, either personally or through counsel.

5. The Department requested that the Administrative Law Judge issue a default recommendation.

6. Because Respondent failed to appear as ordered, Respondent is in default. Pursuant to Minnesota Rule (Minn. R.) 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50; 45.024, subd. 1; 45.027, subd. 7; 332.40; and 332.41.

2. The Department has given proper notice of the hearing in this matter and has fulfilled all procedural requirements of law and rule.

3. Respondent, having made no appearance at the hearing and having not requested any continuance or relief, is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference are hereby taken as true.

4. Respondent engaged in unlicensed collection agency and/or collector activities in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2), and 332.33, subd. 1, by conducting business within the State as a collection agency and/or engaging within the State in the business of collecting claims for others without having first applied for and obtained a collection agency license.

5. Respondent showed itself to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 332.37 (8), by refusing or intentionally failing to account to Vogt Heating, Air Conditioning & Plumbing, LLC (Vogt) for all money collected within 30 days from the last day of the month in which the same was collected.

6. Respondent showed itself to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 332.37 (8), by refusing to return claims, valuable papers, and accounts upon written request of Vogt within 30 days of the request.

7. Respondent showed itself to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 45.027, subd. 7(a)(4), by diverting Vogt's \$1,000 intended to pay for the costs associated with the commencement of legal proceedings.

8. Respondent failed to respond to the Department's information request in violation of Minn. Stat. § 45.027, subd. 1a and 7(a)(3).

9. Respondent's conduct constitutes grounds for the Department to take disciplinary action.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Department take disciplinary action against Morgenthal, Meyers & Sterns, Inc.

Dated: June 14, 2010

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Digitally recorded.
Not transcribed.

NOTICE

This report is a recommendation, not a final decision. The Minnesota Department of Commerce will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minnesota Statutes Section (Minn. Stat. §) 14.61, the Department shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Department must consider the exceptions in making a final decision. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, Market Assurance Division, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, (651) 296-2488, to learn about the procedure for filing exceptions or presenting argument.

If the Department fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Department, or upon the expiration of the deadline for doing so. The Department must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.